

REMARKS/ARGUMENTS

Claims 1-39 are pending in the present application. The Examiner has rejected claims 1-39. Applicant respectfully requests reconsideration of pending claims 1-39.

The Examiner has rejected claims 1-39 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner states that the term “unfavorably” is indefinite because it does not specify in those claims whether “unfavorably” means above or below the threshold. Applicant respectfully disagrees. For example, the Examiner has rejected claims in which Applicant cannot find any occurrence of the term “unfavorably,” such as claims 14, 15, 19, 21, 32, 33, 37, and 39. Even claims in which the term “unfavorably” appears, Applicant submits that such term is not indefinite. For example, on page 6, lines 10-12, the specification states, “If the queue occupancy level compares unfavorably with the first queue occupancy threshold (e.g., the queue is storing more messages than desired),....” Moreover, on page 13, lines 17 and 18, the specification states, “If the comparison at step 130 was unfavorable (i.e., the queue occupancy level is above the first and second queue occupancy level thresholds),....”

M.P.E.P. § 2173.01 states as follows:

“A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as the terms are not used in ways that are contrary to accepted meanings in the art. Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought.”

Accordingly, Applicant submits that the term “unfavorably” has been properly used in a manner consistent with Applicant’s use of such term in the specification and, moreover, not contrary to any known accepted meanings in the art. Thus, Applicant submits that the rejection of claims 1-39 under 35 U.S.C. § 112, second paragraph, should properly be withdrawn.

The Examiner has rejected claims 1-8, 14-18, 22-27, 32-36, and 39 under 35 U.S.C. § 103(a) as being unpatentable over Gehi et al. (U.S. Patent No. 6,134,216) in view of IBM Technical Disclosure (Vol. 34, No. 9, February 1992). Applicant respectfully disagrees.

Regarding claims 1, 14, 22, 25, and 32, Applicant reiterates Applicant's previous arguments. Moreover, Applicant notes that the Examiner states, in the Examiner's response to arguments, "Gehi teaches that $S(n)$ is a filtered version of $X(n)$ and they are both queues (col. 4, lines 10-49, and col. 9, lines 20-30)." Applicant respectfully disagrees. Applicant can find no teaching in the cited portions of Gehi et al. that "they are both queues." Therefore, Applicant submits that the Examiner's response to arguments cannot be reconciled with the teachings of Gehi et al.

Moreover, in the Examiner's response to arguments, the Examiner fails to address Applicant's previously submitted arguments that the IBM Technical Disclosure Bulletin reference "describes a method to allow structured message passing between processes using BSD Sockets that emulates the functionality of System V Message Queue IPC" (page 168, first paragraph) and that the "enqueued message types" and "message of the corresponding type to be enqueued" (page 170, paragraph 2) cited by the Examiner do not disclose enqueueing the plurality of call signaling messages into the call processing queue based on types of call signaling messages. While the Examiner states that "obviousness can only be established... where there is some teaching, suggestion, or motivation... in the knowledge generally available to one of ordinary skill in the art," the Examiner does not cite any evidence to establish an alleged nature and level of such knowledge nor does the Examiner reconcile the attributes of the teachings of the IBM Technical Disclosure Bulletin reference cited above with the teachings of Gehi et al. Thus, Applicant submits that claims 1, 14, 22, 25, and 32 are in condition for allowance.

Regarding claims 2, 15, 23, and 33, Applicant reiterates Applicant's previous arguments. Moreover, in the Examiner's response to arguments, the Examiner fails to address Applicant's assertion that Applicant cannot find any reference in the specification or drawings to support the Examiner's apparent attempt to describe a dispensible type of call signaling messages in the context of what the Examiner terms "wasteful communications resources." Thus, Applicant continues to assert that no support exists for the Examiner's attempts to show alleged motivation to combine the teachings of the cited references. Also, as previously noted, Applicant submits that the incompatibility of the cited references prevents combination of the cited references to allegedly yield the claimed invention, regardless of the alleged motivation. Therefore, Applicant submits that claims 2, 15, 23, and 33 are in condition for allowance.

Regarding claims 3, 7, 16, 24, 34, and 36, Applicant reiterates Applicant's previously presented arguments. Applicant notes that, in the Examiner's response to arguments, the Examiner has failed to address the self-inconsistent nature of the Examiner's alleged reasons for rejection of claims 3, 7, 16, 24, 34, and 36, as noted by Applicant in Applicant's previous arguments. Thus, Applicant submits that claims 3, 7, 16, 24, 34, and 36 are in condition for allowance.

Regarding claims 4, 6, 8, and 27, Applicant reiterates Applicant's previously presented arguments. Moreover, in the Examiner's response to arguments, the Examiner fails to address Applicant's assertion that Applicant cannot find any reference in the specification or drawings to support the Examiner's apparent attempt to describe a dispensable type of call signaling messages in the context of what the Examiner terms "wasteful resource material." Thus, Applicant continues to assert that no support exists for the Examiner's attempts to show alleged motivation to combine the teachings of the cited references. Also, as previously noted, Applicant submits that the incompatibility of the cited references prevents combination of the cited references to allegedly yield the claimed invention, regardless of the alleged motivation. Therefore, Applicant submits that claims 4, 6, 8, and 27 are in condition for allowance.

Regarding claims 5, 17, and 35, Applicant reiterates Applicant's previously presented arguments. Moreover, in the Examiner's response to arguments, Applicant submits that the Examiner fails to address Applicant's assertions that Gehi et al. fails to disclose comparing and enqueueing as recited. Thus, Applicant submits that claims 5, 17, and 35 are in condition for allowance.

Regarding claims 18 and 26, Applicant reiterates Applicant's previously presented arguments. Moreover, in the Examiner's response to arguments, Applicant submits that the Examiner fails to address Applicant's previously presented arguments. Thus, Applicant submits that claims 18 and 26 are in condition for allowance.

Regarding claim 39, Applicant respectfully disagrees. While the Examiner asserts that "it is well-known that a queue can operate as FIFO or LIFO," the Examiner fails to cite any references or provide any other evidence in support of that assertion. Moreover, the Examiner fails to describe any teaching, suggestion, or motivation for combining such alleged knowledge

with the teachings of Gehi et al. and IBM Technical Disclosure Bulletin to allegedly yield the claimed invention. Thus, Applicant submits that claim 39 is in condition for allowance.

The Examiner has rejected claims 9, 10, 28, and 31, under 35 U.S.C. § 103(a) as being unpatentable over Gehi et al. (U.S. Patent No. 6,134,216) in view of IBM, and further in view of Holmes (U.S. Patent No. 5,999,969). Applicant respectfully disagrees.

Regarding claims 9 and 31, Applicant reiterates Applicant's previously presented arguments. Moreover, Applicant submits that the Examiner has failed to address Applicant's previous assertion that the Examiner's asserted motivation of preventing a burst of overhead data teaches away from claims directed toward a sustained overloading condition. Applicant asserts that even the Examiner's alleged reason "to stay under the switch's capacity" teaches away from "when in a sustained overloading condition." Thus, Applicant submits that claims 9 and 31 are in condition for allowance.

Regarding claims 10 and 31, Applicant reiterates Applicant's previously presented arguments. While the Examiner asserts that "it is well-known that a queue can operate as FIFO or LIFO," the Examiner fails to cite any references or provide any other evidence in support of that assertion. Moreover, the Examiner fails to describe any teaching, suggestion, or motivation for combining such alleged knowledge with the teachings of Gehi et al., IBM Technical Disclosure Bulletin, and Holmes et al. to allegedly yield the claimed invention. Thus, Applicant submits that claims 10 and 31 are in condition for allowance.

Regarding claim 28, Applicant reiterates Applicant's previously presented arguments. Moreover, Applicant submits that the Examiner has failed to address Applicant's previous assertion that the Examiner's asserted motivation of preventing a burst of overhead data teaches away from claims directed toward a sustained overloading condition. Applicant asserts that even the Examiner's alleged reason "to stay under the switch's capacity" teaches away from "when in a sustained overloading condition." Thus, Applicant submits that claim 28 is in condition for allowance.

The Examiner has rejected claims 11-13, 19-20, 29-30, and 37-38 under 35 U.S.C. § 103(a) as being unpatentable over Gehi et al. (U.S. Patent No. 6,134,216) in view of IBM in further view of Baldwin (U.S. Patent No. 6,310,952). Applicant respectfully disagrees.

Regarding claims 11, 19, 29, and 37, Applicant reiterates Applicant's previously presented arguments. Applicant notes that the Examiner has failed to address Applicant's previous assertion that Applicant cannot find any reference in the specification or drawings to support the Examiner's apparent attempt to describe a dispensable type of call signaling messages in the context of what the Examiner terms "wasteful communication resources." Thus, Applicant submits that no support exists for the Examiner's attempts to show motivation to combine the teachings of the cited references. Therefore, Applicant submits that claims 11, 19, 29, and 37 are in condition for allowance.

Regarding claim 12, Applicant reiterates Applicant's previously presented arguments, including Applicant's previously presented arguments regarding the allowability of claims from which claim 12 depends over the alleged combination of Gehi et al. and IBM Technical Disclosure Bulletin, as the Examiner does not even discuss any alleged teachings of Baldwin et al. in the Examiner's paragraph 38. Moreover, Applicant submits that the Examiner fails to cite any reference or provide any objective evidence to support the Examiner's assertion that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this updating feature to the existing system of Gehi and IBM for the reason of improving accuracy and organization." Thus, Applicant submits that no support exists for the Examiner's attempts to show motivation to combine the teachings of the cited references. Therefore, Applicant submits that claim 12 is in condition for allowance.

Regarding claim 13, Applicant reiterates Applicant's previously presented arguments, including Applicant's previously presented arguments regarding the allowability of claims from which claim 13 depends over the alleged combination of Gehi et al. and IBM Technical Disclosure Bulletin, as the Examiner does not even discuss any alleged teachings of Baldwin et al. in the Examiner's paragraph 39. While the Examiner asserts that "it is well-known that a queue can operate as FIFO or LIFO," the Examiner fails to cite any references or provide any other evidence in support of that assertion. Moreover, the Examiner fails to describe any teaching, suggestion, or motivation for combining such alleged knowledge with the teachings of Gehi et al. and IBM Technical Disclosure Bulletin to allegedly yield the claimed invention. Thus, Applicant submits that claim 13 is in condition for allowance.

Regarding claim 20, Applicant reiterates Applicant's previously presented arguments, including Applicant's previously presented arguments regarding the allowability of claims from

which claim 20 depends over the alleged combination of Gehi et al. and IBM Technical Disclosure Bulletin, as the Examiner does not even discuss any alleged teachings of Baldwin et al. in the Examiner's paragraph 41. Moreover, Applicant submits that the Examiner fails to cite any reference or provide any objective evidence to support the Examiner's assertion that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this updating feature to the existing system of Gehi and IBM for the reason of improving accuracy and organization." Thus, Applicant submits that no support exists for the Examiner's attempts to show motivation to combine the teachings of the cited references. Therefore, Applicant submits that claim 20 is in condition for allowance.

Regarding claim 30, Applicant reiterates Applicant's previously presented arguments, including Applicant's previously presented arguments regarding the allowability of claims from which claim 30 depends over the alleged combination of Gehi et al. and IBM Technical Disclosure Bulletin, as the Examiner does not even discuss any alleged teachings of Baldwin et al. in the Examiner's paragraph 43. Moreover, Applicant submits that the Examiner fails to cite any reference or provide any objective evidence to support the Examiner's assertion that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this updating feature to the existing system of Gehi and IBM for the reason of improving accuracy and organization." Thus, Applicant submits that no support exists for the Examiner's attempts to show motivation to combine the teachings of the cited references. Therefore, Applicant submits that claim 30 is in condition for allowance.

Regarding claim 38, Applicant reiterates Applicant's previously presented arguments, including Applicant's previously presented arguments regarding the allowability of claims from which claim 38 depends over the alleged combination of Gehi et al. and IBM Technical Disclosure Bulletin, as the Examiner does not even discuss any alleged teachings of Baldwin et al. in the Examiner's paragraph 45. Moreover, Applicant submits that the Examiner fails to cite any reference or provide any objective evidence to support the Examiner's assertion that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this updating feature to the existing system of Gehi and IBM for the reason of improving accuracy and organization." Thus, Applicant submits that no support exists for the Examiner's attempts to show motivation to combine the teachings of the cited references. Therefore, Applicant submits that claim 38 is in condition for allowance.

The Examiner has rejected claim 21 under 35 U.S.C. § 103(a) as being unpatentable over Gehi et al. (U.S. Patent No. 6,134,216) in view of IBM, in further view of Baldwin (U.S. Patent No. 6,310,952), and in further view of Holmes (U.S. Patent No. 5,999,969). Applicant respectfully disagrees.

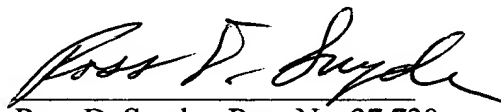
Regarding claim 21, Applicant respectfully disagrees. Applicant reiterates Applicant's previously presented arguments. Applicant submits that the Examiner has failed to address Applicant's previous assertion that the Examiner's asserted motivation of preventing a burst of overhead data teaches away from claims directed toward a sustained overloading condition. Applicant asserts that even the Examiner's alleged reason "to stay under the switch's capacity" teaches away from "when in a sustained overloading condition." Thus, Applicant submits that claim 21 is in condition for allowance.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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Date



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